

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:19CR1051 HEA
	)	
JALEN EXAVIER SIMMS,	)	
	)	
Defendant.	)	

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on Defendant's Alternative Motions to Dismiss Indictment for Lack of Jurisdiction. [Doc. No. 61]. Pursuant to 28 U.S.C. § 636(b), the motions were referred to United States Magistrate Judge Patricia L. Cohen. Judge Cohen held a hearing on the motion on August 3, 2021. Judge Cohen thereafter filed her Memorandum and Recommendations, which denied the Bill of Particulars and recommended that the Alternative Motion be denied. Defendant has filed objections to Judge Cohen's recommendation.

The Court has conducted *de novo* review of the motions and all matters relevant to them. The Court has listened to the recording of the hearing, has fully considered the briefs filed on the original motions as well as the objections, and has independently researched the controlling law. After fully considering all of

these matters, the Court will adopt and sustain the thorough reasoning of Judge Cohen as set out in her Memorandum and Recommendation.

### **Discussion**

Defendant objects to the Recommendation that the Motion to Dismiss the Indictment for Lack of Jurisdiction and for Failure to State an Offense. Defendant argues the Government has not provided any information supporting the proposition that he engaged in an attempt to take a motor vehicle. Judge Cohen accurately, aptly, and succinctly discusses the applicable law with regard to Defendant's claim, based on the applicable Eighth Circuit law. The Eighth Circuit has repeatedly held that "federal criminal procedure does not allow for pre-trial determination of the sufficiency of the evidence." *United States v. Ferro*, 252 F.3d 964, 968 (8th Cir. 2001) (quoting *United States v. Critzer*, 951 F.2d 306, 307–08 (11th Cir. 1992)). In so holding, the Eighth Circuit has recognized that, in criminal cases, "there is no corollary" to the summary judgment procedures contemplated by the Federal Rules of Civil Procedure. *Ferro*, 252 F.3d at 968. The Eighth Circuit has also recognized that the "government is entitled to marshal and present its evidence at trial, and have its sufficiency tested by a motion for acquittal pursuant to [Rule 29]." *Id.* The Eighth Circuit has disapproved "dismissal of an indictment on the basis of predictions as to what the trial evidence will be." *Id.*

### Conclusion

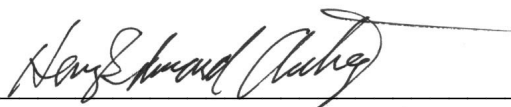
Judge Cohen's Report and Recommendation thoroughly and accurately analyzes the law applicable to the facts which have been established in the record. Defendant's objections are therefore overruled.

Accordingly,

**IT IS HEREBY ORDERED** that Judge Cohen's Report and Recommendation is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

**IT IS FURTHER ORDERED** that Defendant's Alternative Motion to Dismiss Indictment for Lack of Jurisdiction, [Doc. No. 61], is **DENIED**.

Dated this 29<sup>th</sup> day of July 2022.

  
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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE